

cc:HLS  
Richard A. Lesser - #5832  
LESSER & ASSOCIATES  
A Professional Law Corporation  
1 Pearl Street  
Redondo Beach, CA 90277  
Telephone: (310) 374-4808  
Facsimile: (310) 372-7715  
Email: [lesser@divelaw.com](mailto:lesser@divelaw.com)

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JAN 12 2006

at 11 o'clock and 56 min. a.m.  
SUE BEITIA, CLERK

Attorneys for Claimants/Respondents and  
Plaintiffs MATTHEW ISHAM, individually and  
as Guardian ad Litem for, HAYDEN ISHAM,  
a minor and ROXANNE BEST ISHAM

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

IN THE MATTER OF THE  
COMPLAINT OF BLUE  
DOLPHIN CHARTERS, LTD.  
AND TERRY DONNELLY, AS  
OWNERS OF THE VESSEL  
M/V BLUE DOLPHIN, O/N  
1082213, FOR  
EXONERATION FROM  
AND/OR LIMITATION OF  
LIABILITY

) Civil NO. CV05-00037 HG-BMK  
    ) [3 Consolidated Cases]  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )  
    )

) HEARING:  
 ) Date: January 23, 2006  
 ) Time: 10:30 a.m.  
 ) Courtroom: Aha Nonoi, 4<sup>th</sup> Floor  
 ) Judge: The Hon. Helen Gillmor  
 )  
 ) Non-Jury Trial Date: April 11, 2006  
 ) Judge: The Hon. Helen Gillmor  
 )

---

MATTHEW ISHAM,  
individually and as Guardian Ad  
Litem for HAYDEN ISHAM, a  
minor; ROXANNE BEST  
ISHAM,

) CIVIL NO.: CV 04 00559 HG-BMK

Plaintiffs,

vs.

BLUE DOLPHIN CHARTERS,  
LTD. and BLUE DOLPHIN  
DIVING, LTD., CAPTAIN  
ANDY'S SAILING, INC.,  
DOES 1 - 50,

Defendants.

---

DENNIS CLAYPOOL,	)	CIVIL NO.: CV 04 00570 HG-BMK
individually and as Guardian ad	)	
Litem for KRISTEN	)	
CLAYPOOL, a minor, SHERYL	)	
CLAYPOOL, SCOTT	)	
CLAYPOOL, AND KRISTEN	)	
CLAYPOOL,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
CAPTAIN ANDY'S SAILING,	)	
INC., BLUE DOLPHIN	)	
CHARTERS, LTD. And BLUE	)	
DOLPHIN DIVING, LTD.,	)	
	)	
Defendants.	)	
	)	

---

MATTHEW ISHAM, individually and as Guardian ad Litem for,  
HAYDEN ISHAM, a minor and ROXANNE BEST ISHAM'S SEPARATE  
AND CONCISE STATEMENT IN SUPPORT OF REPLY TO  
PLAINTIFF/DEFENDANT BLUE DOLPHIN CHARTERS, LTD. AND  
LIMITATION PLAINTIFF TERRY DONNELLY'S MEMORANDUM IN  
OPPOSITION TO MATTHEW ISHAM, INDIVIDUALLY AND AS  
GUARDIAN AD LITEM FOR HAYDEN ISHAM, A MINOR AND ROXANNE  
BEST ISHAM'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Matthew Isham, individually and as Guardian ad Litem for, Hayden Isham, a minor, and Roxanne Best Isham (hereinafter "Isham Claimants") submit their Separate and Concise Statement in Support of Reply to Limitation Plaintiff/Defendant Blue Dolphin Charters, Ltd.'s and Limitation Plaintiff Terry

Donnelly's Opposition to Isham Claimant's Motion for Partial Summary Judgment filed on December 8, 2005.

Isham Claimants do not dispute paragraphs 1, 5, 6, 9 - 14, 18 - 23, 25 - 30 of Limitation Plaintiff's Separate and Concise Statement. All other paragraphs are either partially disputed or disputed in their entirety and Isham Claimants offer the following additional material facts in support thereof:

MATERIAL FACT	FACTUAL SUPPORT
1. Matthew Isham was never provided with written instruction regarding taking a dive float. Taking a dive float was a suggested, not a mandatory, procedure.	Decl. of Steven McGuire, Ex. "A" depo. of Matt Isham, p. 45: 17 – 24; p. 52: 9 – 12, 20 – 25.
2. Terry Donnelly admitted under oath that there was no written mandatory requirement for taking floats on dives.	Decl. of Steven McGuire, Ex. "B", depo. of Terry Donnelly, p. 123: 7 – p. 125: 4.
3. David Woolley testified that after a brief stop, the Spirit of Kauai motored out to sea before turning toward Mokol'e Point and was thus 300 yards from the Blue Dolphin's anchorage at that point.	Decl. of Steven McGuire, Ex. "C", depo. of David Woolley, p. 73: 17 – p. 75: 4.

Dated: Redondo Beach, California, January 11, 2006.




---

STEVEN M. MC GUIRE, *Pro Hac Vice*  
LESSER & ASSOCIATES, PLC  
Attorneys for Claimants/Respondents  
and Plaintiffs MATTHEW ISHAM, individually  
and as Guardian ad Litem for, HAYDEN ISHAM,  
a minor and ROXANNE BEST ISHAM

I certify that this document is in 14 point Times New Roman font and contains 318 words and does not exceed the page or word limitations set forth in Local Rule 7.5(b).



---

STEVEN M. McGUIRE, *Pro Hac Vice*  
LESSER & ASSOCIATES, PLC  
Attorneys for Claimants/Respondents  
and Plaintiffs MATTHEW ISHAM, individually  
and as Guardian ad Litem for, HAYDEN ISHAM,  
a minor and ROXANNE BEST ISHAM

Z:\Isham\Pleadings\Blue Dolphin Charters - Limitation Liability Complaint Statement of Concise Facts re Reply to Opposition re Isham's Partial MSJ set 012306.wpd